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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/936,304	09/24/1997	DAWEI DONG	15758.705	9608
7590 10/14/2004				
ADAN AYALA, ESQ. BLACK & DECKER INC. 701 E. JOPPA ROAD, TW-199 TOWSON, MD 21286			EXAMINER RODRIGUEZ, ARMANDO	
			ART UNIT 2828	PAPER NUMBER

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/936,304

Applicant(s)

DONG, DAWEI

Examiner

ARMANDO RODRIGUEZ

Art Unit

2828



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

In view of the appeal brief filed on December 22, 2002, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claims 6-13 are pending.

The 35 USC 112 first and second paragraph rejection has been withdrawn.

The 35 USC 102 rejection has been withdrawn.

The 35 USC 103 rejection has been withdrawn.

The double patenting rejection has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

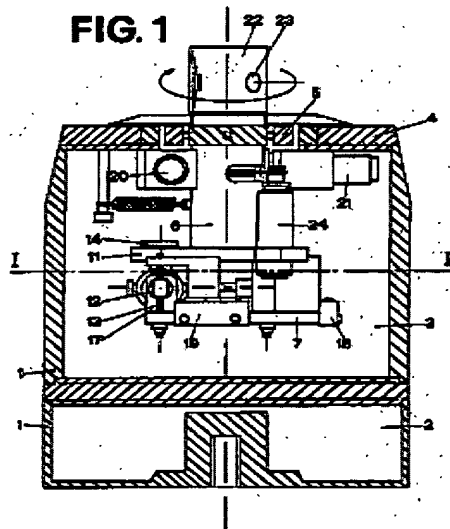
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ammann (PN 4,854,703).

Regarding claims 6,11,

The Ammann reference pertains to laser beam-leveling instruments.

Figure 1 illustrate a laser beam leveling device having a rotational shaft (6) [applicant's rotating shaft], a motor (24) [applicant's motor], a casing (1) [applicant's module], as described in column 2 lines 56-68, column 3 lines 47-57 and column 4 lines 1-5, where a light source producing laser light [column 2 lines 67-68] is disposed in lower part of the shaft (6). The shaft (6) includes an aperture (23) for outputting the laser light, which forms a plane perpendicular to the shaft. Column 4 lines 1-5, describes the motor (24) as providing a continuous rotation [applicant's 360 degrees].



Regarding claims 7,8,

The shaft (6) includes an aperture (23) for outputting the laser light, which forms a plane perpendicular to the shaft.

Regarding claim 9,12,

Column 2 lines 65 to column 3 line 3, describes the laser light source as housed within the rotating shaft, which will inherently provide rotation to the laser light source.

Regarding claim 10,

Column 2 lines 60-62, describes the use of batteries to serve as a power supply for the device of figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ammann (PN 4,854,703).

Figure 1 illustrate a laser beam leveling device having a rotational shaft (6) [applicant's rotating shaft], a motor (24) [applicant's motor], a casing (1) [applicant's module], as described in column 2 lines 56-68, column 3 lines 47-57 and column 4 lines 1-5, where a light source producing laser light [column 2 lines 67-68] is disposed in lower part of the shaft (6). The shaft (6) includes an aperture (23) for outputting the laser light, which forms a plane perpendicular to the shaft. Column 4 lines 1-5, describes the motor (24) as providing a continuous rotation [applicant's 360 degrees].

Ammann does not disclose the use of a second laser diode.

However, in accordance with *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. In the instant case Ammann has disclosed the recited limitations except for a second laser diode, which along with the recited first laser diode provide the reference plane. Ammann does disclose a laser light source, which also forms a reference plane, therefore absent any new or unexpected result the recited second laser diode is considered a mere duplication of parts. See MPEP 2144.04 VI.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARMANDO RODRIGUEZ whose telephone number is 571-272-1952. The examiner can normally be reached on 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MINSUN HARVEY can be reached on 571-272-1835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2828

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ARMANDO RODRIGUEZ
Examiner
Art Unit 2828


MINSUN HARVEY
SUPERVISOR
Art Unit 2828

AR/MH